



GONG REPORT

On the by-elections and re-run elections for the councils and representatives of national minorities in local and regional self-government units, and by-elections for the representatives of national minorities and the Croatian people to representative bodies of local and regional self-government units

February 15, 2004

GENERAL INFORMATION

Re-run elections and by-elections were called in 413 local and regional self-government units but they were held in a total of 162 units, that is in 39.22% of the units. A total of 1,514 candidates were nominated in all the elections, and a total of 173,409 voters had the right to vote.

The elections were monitored by **99 GONG observers** divided into **48 GONG** mobile observer teams, who visited **395**, out of 415, polling stations on the Election Day.

GONG'S GENERAL ASSESSMENT

The Election Day went by in an atmosphere of tolerance and democracy. Election rules and regulations were respected, and polling committees were professional in their work. However, the turnout was very low.

The fact that the elections were conducted in only 39% of the units for which the elections were called due to the lack of nominations and low voter turnout is indicative of the lack of public awareness of the function of councils and representatives of national minorities. The State Election Committee and the Office of the President of the Government of the Republic of Croatia on a number of occasions invited the voters to come out to the elections.

Candidates themselves, and organizations and parties that contest an election always have the key role in motivating voters to come out to the elections, and thus voter turnout is always a result of their efforts.

LEGAL FRAMEWORK AND ELECTION ADMINISTRATION

Legal regulations that contain provisions on these elections in the Republic of Croatia are:

- The Constitution of the Republic of Croatia, Narodne Novine (NN - Official Gazette of the Republic of Croatia), No 41/01

- The Constitutional Act on the Constitutional Court - final draft, NN No 49/02
- The Constitutional Act on the Rights of National Minorities, NN No 155/02
- The Act on the Election of Members to Representative Bodies of the Local and Regional Self-Government Units, NN No 33/01
- The Act on the Amendments to The Act on the Election of Members to Representative Bodies of the Local and Regional Self-Government Units, NN No 45/03
- The Act on Voters' Lists, NN No 19/92
- The Criminal Code, Official Gazette NN No 110/97, 27/98, 50/00, 129/00, 51/01 and 111/03
- Mandatory Instructions of the State Election Committee 138-145, NN No 4/04 and 15/04
- The Decision of the Constitutional Court of the Republic of Croatia, NN No 10/02

LEGAL FRAMEWORK

The Constitutional Act on the Rights of National Minorities and the Act on the Amendments to the Act on the Election of Members to Representative Bodies of the Local and Regional Self-Government Units

Legal framework for the elections for councils and representatives of national minorities is found in the Constitutional Act on the Rights of National Minorities – Chapter III (NN 155/02) and in the Act on the Amendments to the Act on the Election of Members to Representative bodies of the Local and Regional Self-Government Units – Articles 9 to 9d and Chapter VIIIa (NN 45/03).

According to the provisions of the above-mentioned acts, national minorities' councils are non-profit legal entities made up of representatives of national minorities from local (towns and municipalities) or regional (counties) self-government units, whose aim is to participate in public life and local government. Council of a particular minority in a municipality consists of 10 members, in a town it consists of 15 members, and in a county it consists of 25 members. Representatives of national minorities are persons elected by members of national minorities in a particular unit of local or regional self government where the conditions for forming a council were not met, and the number of members of a national minority is higher than 100.

Apart from that, members of a minority population and the Croatian people in areas where they constitute a minority have the right to representation in municipal/town councils and county assemblies corresponding to their proportion in the population of the local or regional self-government unit, if it exceeds 5% of the total population. The statute of the unit determines the number of members of a national minority or members of the Croatian people (where they constitute a minority) that are elected into the representative body.

Members of national minorities participate in local government through councils or representatives of national minorities and through representatives in representative bodies of local and regional self-government units. The Government of the Republic of Croatia calls elections for councils and representatives of national minorities and by-elections for representatives of minorities and the Croatian people in representative bodies by issuing a writ based on census results.

Candidates for membership in national minorities' councils, or candidates for representatives of national minorities can be nominated by national minorities' organizations or at least 20 members of a national minority from a municipality, 30 from a town, and 50 from a county. The number of candidates that one particular organization or a group of voters nominates cannot exceed the number of candidates that are elected into the council of a national minority.

Candidates for representatives of national minorities and the Croatian people in representative bodies can be nominated by political parties, national minorities' organizations or voters (at least 100 signatures for municipality lists, 150 for town lists, and 500 for county lists).

The right to vote is granted to the members of national minorities who have the place of permanent residence in the unit of self-government (county, town, municipality) in which the elections for representatives of their minority are conducted.

Members of councils of national minorities and representatives of national minorities are elected directly by secret ballot for a term of four years.

In the election of members of councils of national minorities the whole unit of self-government makes up one constituency. Constituency lists include the names of all validly nominated candidates arranged in the alphabetical order.

Candidates who receive the highest number of votes are elected to the council of a national minority. The number of elected councillors depends on the size of the council of a national minority that is elected in a particular constituency.

Representatives of minorities and the Croatian people in representative bodies are elected directly by secret ballot and their term of office lasts until the end of the mandate of the representative body.

The ballot paper contains the list of party/coalition/independent lists and their holders. If a council consists of up to three members, every candidate should also have a deputy nominated as well.

Voters vote in person, by circling the ordinal number against the name of the list or candidate.

Election administration bodies are polling committees, municipal, town and county election committees and the State Election Committee.

On January 5th, 2004 the Government of the Republic of Croatia called the elections for members of councils and representatives of national minorities in local and regional self-government units and the elections for representatives of minorities and the Croatian people in representative bodies. The elections were called for February 15th, 2004.

In the course of preparations for conducting the elections the State Election Committee issued seven mandatory instructions for the elections of representatives of minorities and the Croatian people to representative bodies (about the sequence and the timetable of election activities, about the forms for nomination procedures, about nomination procedures, about the rights and duties of observers, about the set-up of polling stations, about the voting procedures of illiterate and disabled persons and persons who are ill or unable to come to polling stations, and about the implementation of earlier mandatory instructions).

Amendments to the Election Act adopted in May 2003, before the elections, which regulate the election of members of councils and representatives of national minorities, are very imprecise and the State Election Committee had to regulate a number of important issues in consequence. After the elections were called, although it is not a legislative body, the SEC had to pass in a very short period of time nine mandatory instructions that define and regulate certain aspects of the election process in closer detail.

Election campaign financing

Election campaign financing is not regulated in a satisfactory way by positive regulations. There are no provisions that stipulate permissible and impermissible donors, campaign expenditure limits, the obligation of participants to make public their campaign expenditure and the sources of campaign funds within a set period, and sanctions for violating the regulations.

According to the decision of the Government of the Republic of Croatia on campaign expenditure limits for the by-elections of January 22nd, 2004 political parties and other authorised nominators who win at least one seat in the representative body of the unit of local or regional self-government have the right to reimbursement of their expenses in the elections of representatives of minorities or the Croatian people to representative bodies. Reimbursement for a member in a representative body is HRK 3,000.00 for municipal council, HRK 4,000.00 for town council, and HRK 5,000.00 for county assembly.

No budget funds are provided for financing campaigns in by-elections and re-run elections for councils and representatives of national minorities in local and regional self-government units.

ELECTION ADMINISTRATION

State Election Committee

The State Election Committee was formed as the highest election administration body in accordance with the Election Act. Due to impreciseness of the Election Act, the SEC was forced to issue

mandatory instructions in order to regulate some organizational issues of election administration. After nominations were accepted, representatives of political parties also joined the SEC.

The SEC informed citizens about the regulations, decisions, mandatory instructions and announcements via its new web site on which it also provided an analysis of the elections. However, there was no *practical* information for voters, such as the list of towns and municipalities where elections were to be conducted, the list of polling stations, the list of candidacies, etc.

Considering the conditions surrounding their work, the amount of work and the closeness of the deadlines in the election procedures, we hold the opinion that the SEC organized these elections in a very professional way. Its cooperation with GONG was good.

County, town and municipal election committees, and polling committees

Election administration was for the most part decentralized and entrusted to county, town and municipal election committees, as it was also done in the elections for members to representative bodies of local and regional self-government units.

Election committees cooperated well with GONG offices providing all necessary information and responding to GONG's reports about irregularities on the election day.

Polling committees

The general impression in these elections is that election and polling committees were well informed and that, with only a few exceptions, they conducted their duties in a professional way.

Some polling committees from Vukovarsko-Srijemska County even warned GONG observers that the voters' lists they had received were not up-to-dated (some persons who had died or moved away long time ago were still on the lists).

Other state institutions

The Central State Administrative Office for Public Administration wholeheartedly cooperated with GONG. It provided all necessary information very quickly. The Office also issued an instruction for the use of general administrative offices in all counties in connection with voters' lists and election administration.

ELECTION CAMPAIGN AND THE MEDIA

NOMINATIONS

By-elections and re-run elections for members of councils and representatives of national minorities

The Government announced 291 elections for members of national minorities' councils, and a total of 115 elections were held, that is 39.52% of the total number of the announced elections. 1453 members of the councils were to be elected in these elections, and 1326 candidates were nominated.

101 elections were called for representatives of national minorities in local and regional self-government units, and 27, or 26.73% of the elections were held. 27 candidates were to be elected, and 28 were nominated.

By-elections for members of councils, i.e. for representatives of Austrian, Ruthenian, and Ukrainian national minorities, were not held because no candidates had been nominated.

By-elections elections for representative bodies (county assemblies and town and municipal/local councils)

The Government of the Republic of Croatia called the total of 21 by-elections for representatives of national minorities and representatives of the Croatian people in representative bodies of local and regional self-government units. 19 by-elections were called for representatives of national minorities in representative bodies and, and 18 by--elections were held, i.e. 94.74%, since there were no

candidates in the municipality Petrijanec (Varazdinska County). 22 candidates were to be elected, and 32 were nominated.

Two candidates were to be elected in the by-elections for representatives of the Croatian people in municipalities Sodolovci and Markusica and 2 candidates were nominated.

ELECTION CAMPAIGN AND THE MEDIA

The peculiarity of these elections was the fact that there was no real election campaigning, except in the town of Pula.

In a large number of local and regional self-government units the number of nominated candidates equalled the number of representatives that were to be elected, so there was no need for election campaigning in the sense of a contest between candidates.

However, direct campaigning in the sense of introducing nominated candidates and their plans for improving the position of members of national minorities at the local level to voters did not take place as well, which, we think, was unjustifiable. Since the elections were held in small local communities we think that the candidates could have introduced themselves to the voters without any great financial cost, which could have led to a higher turnout, and it could have also raised citizens' awareness of this form of minorities' participation in public affairs.

Since there are no regulations for media coverage of local elections as there are for parliamentary elections, there are also no detailed obligations that the media have to conform to in their campaign coverage.

In their news programmes the media timely broadcasted SEC's announcements (3) as well as lower election committees' and GONG's (3) announcements. However, for the most part there was no media coverage of candidates' campaigns, since there were not any. The exception is the media in Istarska County that broadcasted presentations of the candidates for Pula Town Council.

GONG received no calls or objections in connection with the behaviour of the media in these elections.

THE ELECTIONS

THE ATMOSPHERE

The atmosphere at the polling stations was one of tolerance and democracy. Election committees' fair organization of the elections contributed to the overall atmosphere. The State Election Committee and other election committees were very transparent and open in their work.

GONG's central office established good cooperation with the State Election Committee, town/municipal election committees, as well as with most of the polling committees. When trying to solve some minor problems at particular polling stations, we encountered help and understanding of most of the election and polling committees.

ELECTION DAY

GONG's assessment of the election process is based on the reports of mobile observer teams, and citizens' reports. The observers reported only a small number of incidents so we can report the following:

- All polling stations were opened and closed on time, except the polling station number 1 in Drnis, which was opened at 7:20 due to a delay in setting-up the polling station.
- Several polling committees changed the location of their polling stations due to unsatisfactory conditions (heating, etc). They informed voters of the change of locations.
- Polling committees received all necessary election material in time and they properly prepared polling stations for voters' arrival, except at the polling station No. 15 in Vriika where the polling committee did not receive all election material (they did not receive wax for sealing the ballot boxes, and posters with the lists of candidates). The polling committee taped the ballot boxes with Scotch tape and the Town Election committee stamped its seal.

- The polling committee in Hrvatska Dubica received the voters' list without any names. The County Election Committee's explanation was that there was a possibility that voters might come with certificates (being of age, not being registered in voters' lists, etc)
- Members of polling committees at several polling stations in Vukovarsko-Srijemska County complained that the voters' lists were not up-to-dated (a large number of persons from the lists died, moved away, etc)
- GONG observers filed an objection at the polling station No 1 in Slavonski Brod (the Town Hall, Tome Skalice 1) because the polling committee did not set up the polling station in accordance with the Mandatory Instructions On The Set-up of Polling Stations. There was a picture of Franjo Tudjman on the wall and it was not removed even after the observers pointed out this irregularity.
- Polling committees were well informed and they carried out their duties in a professional manner, informing voters about voting procedures.
- Observers did not notice any violations of election silence.

Most frequent phone calls GONG received

217 citizens phoned before the election day usually to ask where the elections would take place, for what minorities, and what the locations of the polling stations were. In addition, two radio stations called to find out whether the elections would take place in their area. Several citizens also commented that GONG's video clip was their only source of information about the election.

On the election day GONG received 219 phone calls from citizens inquiring about the locations of polling stations and whether the elections would be held in their municipality or town.

THE RESULTS AND OBJECTIONS

After the election day county election committees informed the public about voter turnout in constituencies and the elected candidates.

No objections from the candidates were submitted.

RECOMMENDATIONS

The State Election Committee

It is necessary to make the State Election Committee (SEC) a permanent body as soon as possible. Past members of the SEC were judges who had to perform their duties in court during the election period.

The SEC should become a permanent body in order to:

- 1) provide better technical organization of elections
- 2) provide continuous education to members of election committees and polling station committees
- 3) ensure the continuity of informing and educating voters
- 4) provide support to candidates
- 5) establish easier coordination of government administration bodies
- 6) control campaign financing
- 7) facilitate research

This type of permanent body can pay more attention to educating and providing timely information to all voters, members of polling committees, election committees and even candidates themselves. This is especially important because election rules change just before every election, which leads to legal insecurity and untimely informing of voters and candidates.

The Act on Voters' Lists

In these elections the Ministry of Justice, Administration and Local Self-Government and the State Election Committee were once again forced to regulate the issues surrounding voters' lists by issuing a number of Mandatory Instructions and official directives.

Apart from this, one of the major problems is the fact that voters' lists are not up-to-dated. Persons who have died or moved without officially changing their place of permanent residence can often be found registered in voters' lists.

We recommend amendments to the Act on Voters' Lists. The Law needs minor technical amendments with the aim of:

- increasing efficiency and accurateness of keeping records
- establishing an internal network within government administration for transferring necessary data.
- creating a central electoral register
- increasing the responsibility for updating voters' lists
- increasing the quality of informing citizens about voting procedures for different categories of voters
- resolving the issue of the content of entries in voters' lists (citizen identification number-JMBG)
- providing free access to voters' lists to all those who are interested

Election campaign financing

Election process cannot be considered transparent until issues of election campaign financing are resolved and we appeal for the Act on Election Campaign Financing to be passed. Above all, this Act should determine the deadlines for election campaign financing, set limits to party and candidate campaign expenditure, prohibit certain donors (foreign donors, government institutions and state-owned companies, non-profit, religious and humanitarian organizations) and limit some types of donations (e.g. anonymous donations exceeding a certain amount). In addition, it is important to proscribe that parties and candidates have the obligation to submit a statement of donations and an election expenses return to the proper bodies and that these reports have to be made public.

The Act on the Election of Members to Representative Bodies of the Local and Regional Self-Government Units and The Act on the Amendments to The Act on the Election of Members to Representative Bodies of the Local and Regional Self-Government Units

The Election System

Article 9b, page 7 of the Act on the Amendments to The Act on the Election of Members to Representative Bodies of the Local and Regional Self-Government Units

Proportional and majority election system are mixed in this subsection, which is in contradiction with the method of turning votes into mandates proscribed by this Act. It is impossible to conduct an election under D'Hondt method (proportional system) proscribed by this Act if the system of the candidate and deputy (as it is proscribed in this paragraph) is used, which is a characteristic of the proportional system. The question of two-round runoff elections arises in cases when several candidates win equal number of votes for the same mandate and legislation does not provide a solution for this possibility. The recommendation is not to mix election systems within this Act.

Obligations of the media

It is necessary to proscribe by law and harmonize the obligations of the local media partly owned by local and regional self-government units, in connection with the coverage of election campaigns, as well as the obligations of the media that are branches of the Croatian Radio and Television (HRT), in connection with the obligations of the HRT on the national level during election campaigns. The provisions should aim towards providing all election candidates with equal access to all media.

The method of turning votes into mandates

The method proscribed by the Act is not the pure D'Hondt method, but a derivation that demonstrably leads to an excess of mandates, especially in local elections (see the ruling of the Constitutional Court No U-VII-1244/2001). On April 2nd, 2003 the Croatian Parliament adopted the Amendment to the Act on the Election of Representatives to the Croatian Parliament which substituted the up-to-then method (the same as the one in this Act) with the pure D'Hondt method, which was in accordance with the decision of the Constitutional Court, and the same should be done in this case and pure D'Hondt method should be introduced into the Act.

Members of polling committees and election committees

The Act should stipulate whether members of political parties can or cannot be members of election and polling committees.

Also, it is necessary to ban election candidates from both enlarged and standing membership in election and polling committees, since this is a common occurrence on the local level and it is not prohibited by law. It is a case of the direct conflict of interests.

Announcing the results from polling stations

It should be regulated that election committees announce/make available election results for polling stations. It is technically possible to do this but, it still largely depends on the goodwill of particular election committees whether they will do it or not. We consider this kind of announcement to be in the interest of citizens, as well as election participants.

Protection of the right to vote

It is necessary to harmonize the provisions on the protection of the right to vote with Article 91 of the Constitutional Act on the Constitutional Court of the Republic of Croatia, as it was done when the Act on the Election of Representatives to the Croatian Parliament was adopted on April 4th 2003, and then harmonize it with the decision of the Constitutional Court (see decision of the Constitutional Court No U-VII/226/2004).

Constituting the Councils of National Minorities

Considering the number of questions from election candidates who were uncertain about the procedures, it is necessary to regulate by law the procedures for constituting national minorities' councils and who calls them to the opening session.

CONCLUSION

Amendments or adoptions of the above-mentioned legislation are the only way to make the election process completely transparent, to make sure that Croatian citizens are informed and to make them feel dignified while exercising their right to vote.

Therefore we appeal to the Croatian Parliament, ministries and other government institutions to launch and carry out a complete reform of the election legislation of the Republic of Croatia in order to approximate it to the standards of the European Union.